

UNITED STATES DISTRICT COURT
DISTRICT OF NEW HAMPSHIRE

Forrester Environmental Services,
Inc. and Keith Forrester

v.

Civil No. 10-cv-154-JL

Wheelabrator Technologies, Inc.

PROCEDURAL ORDER

During the recent oral argument on Wheelabrator's motion to dismiss the plaintiffs' misappropriation claim (document no. 21), Wheelabrator raised an issue that had not been briefed by the parties: whether the misappropriation claim, even if not pre-empted by federal patent law, is nevertheless pre-empted or otherwise barred by New Hampshire's Uniform Trade Secrets Act ("NHUTSA"), N.H. Rev. Stat. § 350-B:7. The New Hampshire Supreme Court ruled in Mortgage Specialists, Inc. v. Davey, 153 N.H. 764 (2006), that "the NHUTSA pre-empts claims that are based upon the unauthorized use of information" and "essentially creates a system in which information is classified only as either a protected 'trade secret' or unprotected 'general ... knowledge.'" Id. at 777 (quotation omitted). Plaintiffs conceded at oral argument that they are not alleging misappropriation of trade secrets in this case.

To enable the court to evaluate this issue in connection with the pending motion to dismiss, the parties shall file supplemental briefs, on or before **February 28, 2011**, setting

forth their respective positions on whether the plaintiffs' misappropriation claim states a claim for relief under New Hampshire law (setting aside the federal pre-emption issue that the parties have already briefed). The briefs shall not exceed 10 pages each. No additional oral argument will be held unless requested by the parties.

SO ORDERED.



Joseph N. Laplante
United States District Judge

Dated: February 8, 2011

cc: Erik G. Moskowitz, Esq.
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